IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

CRP.No. 261 of 2004

AGAINST THE ORDER IN IA.NOS.2114/02 AND 2115/02 IN LAR.225/2001 of ADL.SUB COURT, THALASSERY

REVN. PETITIONER: PETITIONER

V.P.VILASINI GANGADHARAN,
W/O.GANGADHARAN, RESIDING AT VADAKUMPAD,
THALASSERY.

BY ADV. SRI.SERGI JOSEPH THOMAS

RESPONDENT: RESPONDENT

THE SPECIAL TAHSILDAR,
THALASSERY.

BY GOVERNMENT PLEADER SMT.SMITHA BABU

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

C.R.P. NO. 261 OF 2004

Dated this the 22nd day of August, 2007

O R D E R

The Civil Revision Petition is filed challenging the order dated 31st October, 2002 in I.A.Nos.2114 of 2002 and 2115 of 2002 in L.A.R.No.225 of 2001, on the file of the Court of the Subordinate Judge of Thalassery.

2. The revision petitioner is the claimant in L.A.R.No.225 of 2001. The Land Acquisition Reference was closed on 25.6.2002 for non-appearance of the revision petitioner/claimant. She filed I.A.No.2115 of 2002 under Order IX Rule 9 of the Code of Civil Procedure to reopen the Reference. There was a delay of 47 days in filing I.A.No.2115 of 2002. To condone the delay, I.A.No.2114 of 2002 was filed. The court below dismissed those applications.

3. It is clear that the Land Acquisition Reference was closed only for non-appearance of the claimant. The Supreme Court in **Khazan Singh** v. **Union of India** (2002 (1) KLT 644 (SC)) held that non-participation of any party would not confer jurisdiction on the Civil Court to dismiss a reference case for default. It was held that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party on whom notice was served by the Civil Court did not

participate in the enquiry that would not confer jurisdiction on the Civil Court to dismiss the reference for default.

4. The Supreme Court in **Rajmani** v. **Collector, Raipur** (1997 (1) KLT SN 5, case No.6), held that an application for setting aside an exparte order made by the Reference Court is maintainable.

5. In view of the aforesaid Supreme Court decisions, it is clear that the order passed by the court below is illegal and unsustainable. The delay of 47 days is satisfactorily explained in the affidavit. Therefore, the applications are liable to be allowed.

6. Accordingly, the common order dated 31st October, 2002, impugned in this Revision, is set aside. I.A.Nos.2114 of 2002 and 2115 of 2002 in L.A.R.No.225 of 2001 are allowed. L.A.R.No.225 of 2001 is restored to file. The court below shall dispose of the Land Acquisition Reference on the merits.

The parties shall appear before the court below on 17.9.2007.

(K.T.SANKARAN)
Judge

ahz/